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APPEAL No. 71 OF 1947 FROM ORIGINAL DECREE.

D. R. Bulbule; and another (Original Defendants Nos. 2 and 3)
..... Appellants:

Versus

Rango Ganesh Kulkarni (Original Plaintiff) Respondent.

Appeal against the decision of D.R. Ugrankar, Esquire, Joint Civil Judge (Senior Division) at Belgaum in Regular Suit No. 220 of 1944.

The Additional Assistant Government Pleader for the Appellants.
Mr. V. N. Lokur, Advocate for the Respondent.

(CORAM :- Baydekar and Dixit, JJ.)

19th September 1949.

Oral Judgment (per Baydekar J.).—This is an appeal from a decree passed by the learned First Class Subordinate Judge, Belgaum, to pay compensation of Rs. 100 to the plaintiff in respect of his false imprisonment.

It is not in dispute that on 21st November 1943 defendant No. 1 who was a touring accountant, whose duty it was, among other things, to inspect shops which had licences for sale of Kerosene oil, inspected the accounts of the Fair Price Shop of which the plaintiff was the Chairman admittedly till 4th April 1943. It was the case of the plaintiff that subsequently he was again appointed Chairman, but he said that on 22nd. November 1943 when the incident in the suit took place he had not as a matter of fact accepted the office a second time. The fact remains, however, that defendant No. 1 inspected the register of stocks of the Fair Price Shop and found 12½ tins of Kerosene Short. It was the case of defendant No.1, as well as defendants Nos.2 and 3 that subsequently defendant No.1 called upon the plaintiff to produce the account books of the shop, but the plaintiff failed to do so. They said that then at about mid-night defendants Nos. 2 and 3 issued a warrant for the arrest of the plaintiff and the warrant was executed by a constable who arrested the plaintiff and produced him before defendants Nos. 2 and 3. They then let him off on bail and directed them to go before the Magistrate at Khanapur. The next day the Magistrate at Khanapur told him to go away, saying that there was no valid arrest.

The plaintiff sued the defendants in respect of this false imprisonment and the only question which is to be determined is as to whether when the plaintiff was arrested, the arrest was justifiable and the subsequent detention was justified or not.

Now, the warrant which was issued in this case mentions that the Plaintiff has committed theft and misappropriation in respect of 12½ tins of Kerosene which were found short. The warrant does not say that as a matter of fact the plaintiff was arrested inasmuch as he has failed to produce the account books. The question has become important because when the plaintiff filed a suit defendants Nos.2 and 3 met him with a defence that they arrested him not because of the theft and misappropriation in respect of 12½ tins of Kerosene but because he had failed to produce the account books even though defendant No. 1 ordered him to do so which was necessary for him under the Defence of India Rules. The Defence of India Rules do not make necessary for any one to produce account books, but it is said that a licence was issued to the shop under the Defence of India Rules and one of the conditions of the license was that the licensee was to give facilities at all reasonable time for the inspection of his accounts.

The learned trial Judge has held that even though the defendants adopted this defence, the plaintiff was arrested not because he failed to produce any account books but because it was believed that he had committed an offence, theft or misappropriation of 12½ tins of Kerosene. He has overruled certain other defences which were taken, but it will be convenient to deal with them later. The first question which arises is whether the plaintiff was arrested in respect of his failure to produce the account books.

Now, in the first instance, in the written statement filed by defendants Nos. 1, 2 and 3 there was no defence taken that the plaintiff was arrested in respect of an offence under section 117A of the Defence of India Act. In the second instance, even though defendants Nos. 1 to 3 trotted out that the plaintiff had failed to produce account books and defendants Nos. 2 and 3 set out that the warrant was issued in respect of his failure, the warrant itself does not mention that the arrest was in respect of it. It is true that it was mentioned in the warrant that the officers who issued the warrant were apprehensive that the plaintiff might tamper with evidence. But the account books are not mentioned, nor is any offence of failure to produce the account books mentioned. It is contended on behalf of defendants Nos. 2 and 3 that even though at that moment defendants Nos. 2 and 3 might not have come to a conclusion that an offence was committed under section 117A of the Defence of India Act by the plaintiff inasmuch as he failed to produce the account books, they must have been vaguely aware in view of the emergent times that when a licensee did not produce the account books of his shop he must have committed some offence. Now, in our view assuming that the state of mind of defendants Nos. 2 and 3 was that there was an offence committed when there was a failure to produce the account books, but it was not quite clear under what section the offence was, the result would have been a warrant in which the failure to produce account books would have been mentioned but not section 117A of the Defence of India Act. When we consider along with the absence of any mention in the warrant of a failure to produce the account books along with the specific mention of theft and misappropriation, there can be no doubt that defendants Nos. 2 and 3 are entirely innocent of any apprehension in regard to the failure to produce the account books being an offence under section 117A of the Defence of India Act, or otherwise. They were vague but the vagueness was in so far as their powers to arrest were concerned even on the footing that theft and misappropriation were committed. The vagueness was not as regards the section under which an offence of failing to produce the account books would fall.

We are satisfied that this story that the plaintiff was arrested because he failed to produce the account books is a myth. This is in spite of the fact that there is some evidence led in order to support the defence version.

In that case the arrest obviously was not justifiable in accordance with law and the only question is whether to a tort of false imprisonment there is any defence.

The first point made by Mr. Thakor who appears on behalf of defendants Nos. 2 and 3 is that the plaintiff admitted that the defendants were acting without malice. But we fail to understand the absence of malice as a defence to the tort of imprisonment, though no doubt if there was no malice, that would be taken into consideration while awarding compensation; the learned trial Judge has taken it into consideration when he awarded Rs. 100 to the plaintiff as damages.

It is said, however, that even if the absence of malice is not a sufficient defence, defendants Nos. 2 and 3 had a defence in section 17 of the Defence of India Act. That section says that no suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or

intended to be done in pursuance of this Act or any rules made thereunder or any orders issued under any such rule. It is said that in this case the offence under section 117A of the Act was an offence committed under the Act, and when, therefore, defendants Nos. 2 and 3 proceeded to arrest the plaintiff because he had committed this offence their act in issuing the warrant was an act done in pursuance of the Act. Now, in the first instance, we do not believe that the plaintiff was arrested because he had in the view of defendants Nos. 2 and 3 committed the offence of failure to produce the account books. In the second instance, if he failed to produce the account books it would mean that he would commit an offence under the Defence of India Act but when subsequently he was arrested, assuming that he was arrested because of the failure to produce the account books, the arrest would be a criminal offence under this

Section 64 of the Criminal Procedure Code. It would not be an arrest under the

Magistrate may some times act judicially, but all acts of a Magistrate are not judicial. The question is whether in this case defendants Nos. 2 and 3 were acting judicially when they effected plaintiff's arrest. Now a Magistrate may be said to have acted judicially when e.g., there is a complaint before him in regard to an offence and having power to take cognizance he takes cognizance and issues a warrant. He is then acting as a Magistrate who has power to decide a case between the complainant and the accused person. In this case it is admitted that defendants Nos. 2 and 3 have no power whatsoever of taking cognizance of an offence. They had indeed information before them which showed that the plaintiff might have committed the offence of theft and misappropriation in regard to the tins of Kerosene, but there was nothing which ~~showed that they~~ ~~showed that they~~ they could do about it. Even if it is assumed that there was an offence of failure to produce account books committed in the presence of defendants Nos. 2 and 3, they would have power under section 64 of the Criminal Procedure Code to arrest him but that power they would not be exercising judicially. Such a power though not necessarily in regard to all offences committed in their presence is possessed by the police also. It can hardly be contended merely because the power is a power to arrest or as a matter of fact a power to release a person on bail, that the power to arrest is a judicial power. The meaning of the words "judicial act" is pointed out by their Lordships of the Privy Council in the case *Sinclair v. Broughton* (1882) 9 I. A. 152. In our view this Act does not give any protection to defendants Nos. 2 and 3.

The appeal must, therefore, be dismissed with costs.

By order of the Court,

(Signed) S. H. BELAVADI.

Exd. by :- M.L.S.

Deputy Registrar.

SEAL

True Copy

Sd/-

for Deputy Registrar.
The 24th day of July 1950.

SSD.

10.7.56.

4c.

Sectioner Mr. Desai. W.A. 0- 8 - 0

Examiner Mr. A. U. Patel) 0- 2 - 0
Reader Mr. Naik)

Paper charges ... 0- 0 - 3

Total Rs. 0- 10 - 3

Annas ten and pias three only.

Sd/-

Supdt Decree Dept.
19/ 11/ 49.

- In the High Court of Judicature at Bombay.

- Monday the 19th day of September 1949.

- Appeal No. 71 of 1947 from Original Decree.

1. D.R. Bulbule ; 2. M.G. Golikeri ...)
(Original Defendants Nos. 2 and 3)) Appellents.

Versus

Rango Genesh Kulkarni .. (original Plaintiff) .. Respondent.

Claim Rs. 100-0-0 for all purposes.

The Plaintiff sued to recover Rs. 5001 as compensation from the defendants.

The Original Suit No. 480 of 1044 was decided by the Joint Civil Judge (Senior Division) of Belgaum who passed a decree for Rs. 100-0-0 with costs in proportion against defendants Nos. 2 and 3 and dismissed the suit against the rest.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue by the Hon'ble Mr. Justice Weston on the 6th day of February 1947.

The grounds of objection to the decision appealed against are :-

1. That the learned Judge should have held that the Plaintiff was lawfully arrested.
2. That the learned trial Judge should have held that the Plaintiff had no cause of action against the defendants Nos. 2 and 3.
3. That the decree is contrary to law and the evidence on the records.
4. That the damages awarded are excessive.

Ceram :- Bavdekar and Dixit, JJ.

For the reasons stated in the accompanying Judgment, the Court confirms the decree of the lower Court and dismisses the appeal with costs.

19th September 1949.

Sd/- S. H. Belavadi.

Deputy Registrar.

Bill of costs in the High Court.

By the Appellants :---	Rs.	as.	ps.
Stamps for Memorandum of appeal	9	6	0
Stamps for Copies of Decree and Judgment	1	14	0
Stamps for Vakalatnama	2	8	0
Bhatta for Process	0	12	0
Sectioner's fee	31	14	0
Advocate's fee	45	0	0
Printing charges	11	0	0
Copying charges for preparing paper books ...	31	10	0
Translation fee	12	0	0
Copying fee under Rule 111 of the High Court; Appellate Side Rules 1936	12	0	0

Total Rs. 158 - 0 - 0

By the Respondant	Rs.	as.	ps.
Stamps for Vakalatnama in C.A. 900/46 for delay	0	0	0
Advocate's fee	45	0	0

Total Rs.	45	0	0

(S E A L)

Sd/- S. H. Belavadi.

Deputy Registrar.

The 19th day of September 1949.

True Copy

Sd/-

for Deputy Registrar.
The 19th day of November 1949.